

JAN 17 2007

Howard & Howard

law for business

FACSIMILE TRANSMITTAL SHEET

This communication is confidential and intended only for the addressee. Any distribution or duplication of this communication is prohibited. If this facsimile was not intended for you, please telephone us immediately so that we can arrange for its return at our expense.

TO:	FROM:
Examiner Joseph A. Dillon, Jr.	Raymond E. Scott
COMPANY:	DATE:
U.S. Patent & Trademark Office	1/17/2007
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
571.273.8300	4
PHONE NUMBER:	SENDER'S TELEPHONE NUMBER:
	(865) 458-6616
CLIENT NUMBER:	SENDER'S FAX NUMBER:
061733.00142	(865) 408-9916
RE:	
Response to Species Restriction and Election Requirement	
Serial No. 10/805,835	

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Attached is our Response to Species Restriction and Election Requirement regarding the above-referenced application. Thank you for your attention in this matter.

* PLEASE CONFIRM SAFE DELIVERY OF THIS FACSIMILE *

HOWARD & HOWARD ATTORNEYS, P.C.
THE PINEHURST OFFICE CENTER, SUITE 101
39400 WOODWARD AVENUE
BLOOMFIELD HILLS, MICHIGAN 48304-5151

JAN 17 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Klobucar, et al.
Appl. No. : 10/805,835
Filed : March 22, 2004
Title : PUMP FOR TRANSFERRING PARTICULATE MATERIAL
Examiner : Joseph A. Dillon, Jr.
Grp./A.U. : 3651
Docket No. : 061733.00142

RESPONSE TO SPECIES RESTRICTION AND ELECTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

The Applicant respectfully traverses the Species Restriction/Election Requirement set forth in the Office Action mailed December 19, 2006 for the reasons set forth below. However, as required by 35 U.S.C. § 121, the Applicant provisionally elects to prosecute claims directed to the embodiment of the pump for transferring particulate material disclosed in Figure 2. As set forth below, claims 1 to 8, 11 to 22 and 25 to 27 specifically read upon the embodiment of the pump shown in Figure 2. Claims 9, 10, 23, 24, 28 and 29 are more specifically directed to the embodiment of the pump shown in Figures 3 to 5.

The Examiner in the Species Restriction/Election Requirement misapprehends the disclosure of this application. This application does not disclose three independent or divergent species as found by the Examiner.

Figure 1 is a schematic illustration of one embodiment of the pump for transferring particulate material of this invention "*in its simplest form*." [00017], lines 7 to 9. The embodiments of the pump disclosed in Figures 2 and 3 include the *identical elements* of the pump disclosed in Figure 1 and include the *same reference numbers*. The embodiment of the pump shown in Figures 2 and 3 includes a vacuum source (38 in Figures 1, 2 and 3) which is a venturi-type nozzle (50) as shown in Figures 2 and 3. The valve (42) shown in Figure 2 is specifically described as a "pinch-type valve" and in the embodiment of the pump shown in Figure 3, the pinch-type valve (42) surrounds the second open end (28) of the particulate or

Att. Docket No. 061733.00142

powder chamber (24). The embodiment of the pump disclosed in Figure 2 specifically discloses the control (54), which is described in more detail with regard to the embodiment shown in Figure 3.

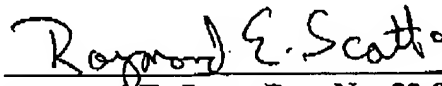
Thus, *all of the claims* in this application are directed to the embodiment of the pump disclosed in Figure 2. However, claims 9, 10, 23, 24, 28 and 29 specifically recite that the pinch valve (42 in Figures 1, 2 and 3) surrounds the second open end (28) of the particulate chamber (24) as specifically disclosed in Figure 3. It is important to note, however, that these claims are not exclusive to the embodiment of the pump shown in Figure 3 because the disclosure of the embodiment of Figure 2 is generic to and does not exclude a pinch valve (42) surrounding the second open end (28) of the particulate chamber (24).

Thus, the Applicant respectfully requests reconsideration of the Species Restriction/Election Requirement and withdrawal of the restriction.

Although it is believed that no fee is due for the filing of this Response, the Commissioner is authorized to charge our Deposit Account No. 08-2789 for any additional fees or credit the account for any overpayments regarding this Response.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

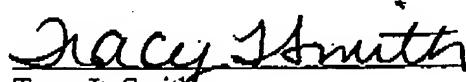


Raymond E. Scott, Reg. No. 22,981
The Pinehurst Office Center, Suite 101
39400 Woodward Avenue
Bloomfield Hills, Michigan 48304-5151
Telephone: (865) 458-6616

Dated: January 17, 2007

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the attached **Response to Species Restriction and Election Requirement** is being facsimile transmitted to the Commissioner for Patents and Trademarks, Alexandria, Virginia, to the attention of **Examiner Joseph A. Dillon, Jr.** from **Group: 3651** to facsimile number **(571) 273-8300** on **January 17, 2007**.


Tracy L. Smith